

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

ONE BEACON INSURANCE COMPANY a/s/o  
Applied Building Development of New York, Inc.,

Plaintiff,

- against -

COMBINED ENERGY SERVICES, INC.

Defendant.

---

ANSWER TO  
COMPLAINT

TRIAL BY JURY DEMANDED  
Case No.: 06/CV 5629

Defendant, COMBINED ENERGY SERVICES, INC. by its attorneys, the **LAW OFFICES OF JOHN P. HUMPHREYS**, hereby answers the Complaint of the plaintiff, herein as follows:

**THE PARTIES**

1. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the Complaint designated "1," "2," "5," and "6".
2. Admits that defendant COMBINED ENERGY SERVICES, INC. is a corporation duly organized and existing pursuant to the laws of the State of New York, but DENIES that the corporation was in the business of manufacturing heaters as contained in the paragraph of the Complaint designated "3".

**JURISDICTION**

3. Denies each and every allegation contained in the paragraph of the Complaint designated "7" and refers all questions of law to the Court.

**THE LOSS**

4. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the Complaint designated "8," and "10".
5. Denies each and every allegation contained in the paragraph of the Complaint designated "9".

**ANSWERING A FIRST CAUSE OF ACTION  
AS TO DEFENDANT'S NEGLIGENCE**

6. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph of the Complaint designated "11".
7. Denies each and every allegation contained in the paragraphs of the Complaint designated "12" and "13".

**ANSWERING A THIRD CAUSE OF ACTION  
AS TO DEFENDANT'S BREACH OF CONTRACT**

8. Denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraphs of the Complaint designated "14" and "15".
9. Denies each and every allegation contained in the paragraph of the Complaint designated "16" and "17".

**AS AND FOR A FIRST, SEPARATE, AFFIRMATIVE AND  
COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

10. The Complaint fails to state a cause of action upon which relief can be granted as to this party.

**AS AND FOR A SECOND, SEPARATE, AFFIRMATIVE  
AND COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

11. Plaintiff has failed to join all necessary and indispensable parties to this action.

**AS AND FOR A THIRD, SEPARATE, AFFIRMATIVE AND  
COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

12. Upon information and belief, any injury or damage which plaintiff may have sustained at the time and place set forth in the complaint therein was the result of the negligence of other persons not named as defendants herein.

**AS AND FOR A FOURTH, SEPARATE, AFFIRMATIVE  
AND COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

13. That the plaintiff's alleged damages representing the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss were or will, with reasonable certainty, be replaced or indemnified, in whole or in part from a collateral source and the Court shall, pursuant to CPLR Section 4545(c), reduce the amount of any finding with respect to such alleged damages by the amount such damages were or will be replaced or indemnified by such collateral source.

**AS AND FOR A FIFTH, SEPARATE, AFFIRMATIVE AND  
COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

14. Plaintiff failed to take all steps necessary and proper to mitigate damages.

**AS AND FOR A SIXTH, SEPARATE, AFFIRMATIVE AND  
COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

15 This party's responsibility, if any and which is expressly denied herein, is less than 50% of any responsibility attributed to any tortfeasor, whether or not a party hereto, who is or may be responsible for the happening of plaintiff's alleged accident and thus, this party is entitled to a limitation of damages as set forth in CPLR Article 16.

**AS AND FOR A SEVENTH, SEPARATE, AFFIRMATIVE  
AND COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

16 The injuries and damages allegedly sustained by plaintiff were caused in whole or in part by the culpable conduct of plaintiff, including negligence and assumption of risk, as a result of which the claim of plaintiff is therefore barred or diminished in the proportion that such culpable conduct of plaintiff bears to the total culpable conduct causing the alleged injuries and damages.

**AS AND FOR A EIGHTH, SEPARATE, AFFIRMATIVE  
AND COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

17 The forum of this action is an inconvenient forum in accordance with the rules of the Civil Practice Law and Rules (CPLR) and in the interest of substantial justice the action should be heard in another forum.

**AS AND FOR A NINTH, SEPARATE, AFFIRMATIVE AND  
COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

18. The product(s) in issue was/were altered by someone not under the control of this answering defendant.

**AS AND FOR A TENTH, SEPARATE, AFFIRMATIVE  
AND COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

19. When the product(s) left this answering defendant's control, the product(s) was/were fit and proper for the use it was designed and intended.

**AS AND FOR A ELEVENTH, SEPARATE, AFFIRMATIVE  
AND COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED  
CAUSE AND/OR CAUSES OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND  
ALLEGES UPON INFORMATION AND BELIEF:**

20. Plaintiff's alleged damages were caused by the misuse and/or abuse of the product(s) described in the Complaint, or an other product, and is a bar to any recovery.

**WHEREFORE**, the defendants demand judgment that the complaint be dismissed with costs and disbursements of this action.

Dated: New York, New York  
September 13, 2006

Respectfully,

*Robert P. Fumo*

---

Robert P. Fumo, Esq. (RPF 5450)  
LAW OFFICES OF JOHN P. HUMPHREYS  
Attorneys for Defendant COMBINED ENERGY  
SERVICES, INC.  
One Whitehall Street, 12<sup>th</sup> floor  
New York, New York 10004  
(212) 530-7777

TO:

SHEPS LAW GROUP, P.C.  
ROBERT C. SHEPS, ESQ.  
35 Pinclawn Road, Suite 106E  
Melville, N.Y. 11747  
(631) 249-5600  
File No.: 6841

STATE OF NEW YORK

COUNTY OF NEW YORK

AFFIDAVIT OF  
SERVICE BY MAIL

I, Donna Kurtz, being duly sworn, deposed and says that deponent is a secretary of the LAW OFFICES OF JOHN P. HUMPHREYS, attorneys for one of the parties herein; is over 18 years of age; is not a party to the action. The deponent served the papers noted below by regular mail, the same securely enclosed in the postage paid wrapper in the Letter Box maintained and exclusively controlled by the United States Postal Service at One Whitehall Street, 12<sup>th</sup> Floor, New York, New York 10004 directed to the said attorney(s) at the address indicated below; that being the address within the state designated by said attorney(s) for that purpose, or the place where said attorneys(s) then kept an office, between which places there then was and now is a regular communication by mail as follows:

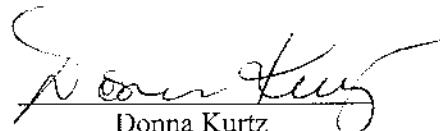
Date mailed:

9/18/06

Papers Served: ANSWER TO COMPLAINT/INTERROGATORIES/NOTICE TO TAKE DEPOSITION UPON ORAL ARGUMENT

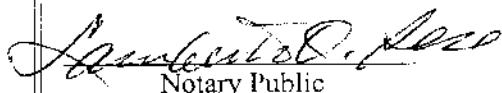
Served Upon:

SHEPS LAW GROUP, P.C.  
ROBERT C. SHEPS, ESQ.  
35 Pinelawn Road, Suite 106E  
Melville, N.Y. 11747  
(631) 249-5600  
File No.: 6841



Donna Kurtz

Sworn to before me this  
18th day of September, 2006

  
Notary Public

LAMBERTO Q. SESE  
Notary Public, State of New York  
No. 01SE6080713  
Qualified in New York County,  
Commission Expires September 23, 2007